IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23511 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANLAL M KAKRECHA - Petitioner(s)
Versus
UNION OF INDIA - Respondent(s)

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Appearance :
MR DK NAKRANI for Petitioner(s) : 1,
MR MUKESH A PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE R.P.DHOLAKIA

Date : 24/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Rule. Mr.Patel learned counsel waives for the respondent. Heard learned counsel for the parties.

2. Admittedly, as per the terms and conditions of the tender, the petitioner has filed Arbitration Petition No.59/2005, wherein this Court has issued notice on 27.10.2005 making it returnable on 24.11.2005. Inspite of it, demand notice dated 22.11.2005 has been issued by the Deputy Chief Engineer (C) BOT, Western Railway, Ahmedabad calling upon the petitioner to deposit Rs.22.84 lacs approx.

3. When Arbitration Petition is already pending before the Court then, the respondent could not have proceeded further with the notice and, hence, only on this ground, the impugned notice is required to be quashed and set aside. At this stage, learned counsel for the respondent Mr.Patel states that they may be allowed to proceed against the petitioner after the arbitration proceedings are over. It goes without saying that after the

arbitration proceedings are decided, it will always be open for the respondent to proceed against the petitioner in accordance with law. With these observations, this petition is allowed and the impugned demand notice dated 22.11.2005 is hereby quashed and set aside. Rule is made absolute. However, it will be open for the respondent to issue fresh notice after the arbitration proceedings are over. Direct service is permitted.

(B.J.SHETHNA, J.)

(R.P.DHOLAKIA,J.)

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